86-2038

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

BERNARD SNYDER,

Petitioner

v.

THE PENNSYLVANIA JUDICIAL INQUIRY AND REVIEW BOARD

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Harry Lore, Esquire
1919 Walnut Street
Philadelphia, PA 19103
(215) 569-3304
Attorney for Petitioner

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

38 pp

Questions Presented

(a) Whether a Judge charged with judicial misconduct has the same Fourteenth Amendment right to favorable evidence under this Court's decision in *Brady v. Maryland*, 373 U.S. 83 (1963), as a defendant charged with a criminal offense.

(b) Whether a Judge is denied his right to due process of law under the Fourteenth Amendment to the United States Constitution when a State Board that recommends his removal from the bench simultaneously performs investigative, prosecutorial and judicial functions.

(c) Whether the Supreme Court's sanctioning petitioner for presiding over a recusal hearing denies petitioner substantive and procedural due process in that prior to the imposition of sanctions, it was the rule of the Commonwealth that the judge to whom a recusal motion is directed is to preside over the recusal proceedings.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

No. _____

BERNARD SNYDER,

Petitioner,

v.

THE PENNSYLVANIA JUDICIAL INQUIRY AND REVIEW BOARD

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petition for Certiorari

Petitioner, Bernard Snyder, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Pennsylvania entered in these proceedings on March 20, 1987.

Opinions Below

The opinion of the Pennsylvania Supreme Court, which is published at ____ Pa. ____, 523 A.2d 294 and was filed March 20, 1987, appears in the Appendix hereto, at App. 1.

The unreported findings and conclusions of the Review Board, dated May 29, 1985, and submitted to the Supreme Court of Pennsylvania on July 1, 1985 are quoted in full in the opinion of the Supreme Court making unnecessary their reprinting herein.

Jurisdiction

The judgment of the Pennsylvania Supreme Court was entered on March 20, 1987. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

Constitutional and Statutory Provisions Involved

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution, Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Constitution, Article V Section 18 provides in pertinent part:

> (a) There shall be a Judicial Inquiry and Review Board having nine members as follows: three judges of the Court of Common Pleas from different judicial districts and two judges of the Superior Court, all of whom shall be selected by the Supreme Court; and two non-judge members of the

bar of the Supreme Court and two non-lawyer electors, all of whom shall be selected by the Governor.

(d) Under the procedure described herein, any justice or judge may be suspended, removed from office or otherwise disciplined for violation of section 17 of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administratin of justice or brings the judicial office into disrepute and may be retired for disability seriously interfering with the performance of his duties.

(e) The board shall keep informed as to matters relating to grounds for suspension, removal, discipline, or compulsory retirement of justice or judges. It shall receive complaints or reports, formal or informal, from any source pertaining to such matters, and shall make such preliminary investigations as it deems necessary.

(f) The board after such investigation, may order a hearing concerning the suspension, removal, discipline or compulsory retirement of a justice or judge. The board's orders for attendance of or testimony by witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings.

(j) The Supreme Court shall prescribe rules of procedure under this section.

Statement of the Case

In 1972, petitioner was appointed to preside over a libel trial captioned *Edgehill v. Municipal Publications, Inc.*, filed in the Philadelphia Court of Common Pleas in the May Term, 1972, and docketed with the court at Civil Action No. 2371. Counsel for the defense in the *Edgehill* proceeding, filed a complaint with the Pennsylvania Judicial Inquiry and Review Board, alleging that petitioner had been conducting *Ex Parte* communications with Plaintiff's counsel in the *Edgehill* case. Prior to filing its complaint with the Judicial Inquiry and Review Board, counsel for the defense in the *Edgehill* proceeding filed

a motion with the Court of Common Pleas requesting petitioner to recuse himself from the *Edgehill* proceedings.

Petitioner conducted a hearing in connection with the recusal motion and subsequently arranged for the motion to be reassigned to another judge of the Court of Common Pleas in accordance with established court procedure and practice. Upon learning that Petitioner had placed the recusal motion into the pool for reassignment, the *Edgehill* defense counsel filed a subsequent motion seeking to bar any judge sitting on the Philadelphia bench from hearing the recusal motion. When Petitioner learned of this subsequent motion, Petitioner arranged, within established court practice and procedure, to have the recusal motion reassigned to Petitioner for resolution. Prior to a resolution of the recusal motion, Petitioner entered a verdict in the *Edgehill* case in favor of the Plaintiff. Subsequently, and as alluded to in the opinion of the Pennsylvania Supreme Court attached in the appendix, the Pennsylvania Supreme Court granted a Writ of Prohibition against Petitioner's resolution of the recusal motion and simultaneously reassigned the recusal motion to a Common Pleas judge from York County.

Upon review of the complaint filed by *Edgehill* defense counsel, and after a hearing thereon, the Pennsylvania Judicial Inquiry and Review Board, concluded that petitioner had violated Canons 1, 2 and 3 of Pennsylvania's Code of Judicial Conduct. Specifically, the board concluded that petitioner had violated Canon 1 which provides: "A judge should uphold the integrity and independence of the judiciary". The board's finding in this regard was based upon the fact that petitioner presided over the recusal motion filed by the *Edgehill* defense counsel.

The board further concluded that petitioner had violated Canon 2 which provides: "A judge should avoid impropriety and the appearance of impropriety in all his activities". In this regard, the board concluded that since petitioner entered a verdict in the *Edgehill* case while the motion for recusal was pending, the entering of the verdict constituted a violation of this particular Canon. The Board also concluded as a matter of law that petitioner entered the *Edgehill* verdict upon learning

that the *Edgehill* defense counsel had requested the assignment of a judge from another county to hear argument on petitioner's recusal. The Board concluded that Canon 2 had also been violated by the fact that petitioner presided over the hearing on his recusal. The Board also concluded that petitioner violated Canon 2 by refusing to admit the testimony of one of petitioner's former law clerks. Finally, the Board concluded that petitioner violated Canon 2 in that petitioner had lunch with an attorney who was counsel for the Plaintiff in a matter separate from the *Edgehill* proceeding without apprising defense counsel in that matter.

The Board also concluded that petitioner had violated Canon 3 which provides: "A judge should perform the duties of his office impartially and diligently". In support of its conclusion in this regard, the Board found that this alleged violation of the Canon was based upon the manner in which petitioner presided over the *Edgehill* trial in that petitioner allegedly failed to take appropriate disciplinary measures against counsel for the *Edgehill* parties for their unprofessional conduct toward each other and towards petitioner.

On March 20, 1987, the Pennsylvania Supreme Court stated that after a *de novo* review, the court found that the Board's findings and conclusions were correct and that the recommended discipline of removal was appropriate. Two of the seven Supreme Court Justices reviewing this matter filed dissenting opinions. The majority opinion, without discussion, affirmed the findings and recommendations of the Judicial Inquiry and Review Board.

During the proceedings before the Judicial Inquiry and Review Board, petitioner filed a Writ of Mandamus with the Pennsylvania Supreme Court seeking access to favorable evidence contained in documents in the Board's files. As set forth in footnote one of the Court's decision attached to the Appendix herein, this request was denied without discussion.

Within ninety days of the Pennsylvania Supreme Court's decision on March 20, 1987, petitioner applied to this Court for a Writ of Certiorari.

Reasons for Granting the Writ

I.

THE PENNSYLVANIA SUPREME COURT'S UNPRECEDENTED DENIAL OF PETITIONER'S REQUEST FOR FAVORABLE EVIDENCE IS A DENIAL OF THIS COURT'S RULING IN BRADY v. MARYLAND. THE PENNSYLVANIA SUPREME COURT'S REFUSAL TO GRANT PETITIONER ACCESS TO "BRADY" MATERIAL HAS FAR REACHING CONSEQUENCES.

Petitioner seeks review in the United States Supreme Court of the unprecedented denial of the disclosure standards set forth by this Court in *Brady v. Maryland*, 373 U.S. 83 (1963), wherein this Court commanded that the requirements of due process and fair trial required that one who is criminally accused receive all favorable evidence obtained by the prosecution.

There can be no question that the proceeding against petitioner is criminal in nature. In fact, the Pennsylvania Supreme Court in *In Re Dandridge*, 462 Pa. 67, 337 A.2d 885, 888 (1975), has labeled disciplinary proceedings as "quasi criminal".

The Pennsylvania Supreme Court's denial of petitioner's request for *Brady* material has wide ranging and grave ramifications. Substantially all of the states as well as the District of Columbia and Puerto Rico have established by constitution, statute or court rule some type of judicial inquiry and disciplinary procedure. Removal from office is a sanction that can be imposed in each and every one of these disciplinary procedures. Thus, the issues presented in this case will almost certainly arise in other states and again in the state of Pennsylvania whenever the investigative record of a judge under investigation by a Judicial Inquiry and Review Board contains favorable evidence to that judge.

Ascension to the bench should not require divestiture of fundamental rights guaranteed by the federal constitution;

namely, the right to disclosure of favorable evidence. A determination by this Court of the Constitutional questions presented here is essential to the vindication of these constitutional guarantees.

II.

THE DECISION OF THE PENNSYLVANIA SUPREME COURT DENIES PETITIONER HIS RIGHT TO A FAIR TRIAL.

In California v. Trombetta, 467 US 479, 485 (1984), this Court stated:

> Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the court has developed 'what might loosely be called the area of constitutionally guaranteed access to evidence' *United States v. Valenzuela-Bernal*, 458 U.S. 858. Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system.

In the instant case, petitioner advised the Pennsylvania Supreme Court that the Board had in its possession, evidence that petitioner believed to be exculpatory. In the proceedings below, the Board never contested that it in fact possessed evidence that would be exculpatory to petitioner.

The minimum due process requirements for disclosure of favorable evidence to a defendant was first articulated by this Court in *Brady v. Maryland*, 373 U.S. at 87:

> [T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution.

Moreover, in *Brady v. Maryland*, 373 U.S. at 112-113, this Court found that if there is a reasonable doubt about the guilt of the accused, then, there must be a new trial if Brady material has not been disclosed. In the instant case, one justice of the Pennsylvania Supreme Court in deciding petitioner's fate went on record expressing his reasonable doubt as follows:

> "After completely reviewing the testimony I can conclude and do, under a standard of clear and convincing evidence, Judge Snyder must be disciplined. I am, however, not satisfied beyond a reasonable doubt that removal, the Capital penalty, is justified without a finding of personal dishonesty or conviction of an infamous crime." *Judicial Inquiry and Review Board v. Snyder*, 523 A.2d at 302.

The standard established in *Brady v. Maryland* should not vary in the instant case simply because the case is quasi criminal in nature. Removal from judicial office with the admonishment that the office can never be reobtained by election is the severest of penalties.

Moreover, the functional composition of Pennsylvania's Judicial Inquiry and Review Board mandates disclosure of exculpatory evidence. In Pennsylvania, the Board simultaneously performs investigative, prosecutorial, and judicial functions when reviewing a disciplinary complaint against a judicial officer. Those members of the Board that do the investigation are separate from those members of the Board that perform the prosecutorial functions. Those members that constitute the judicial arm of the Board are separate from the investigative and prosecutorial arms of the Board. Thus, a question arises as to whether the exculpatory material was even made available to those members of the Board who sat in judgment in petitioner's proceeding.[1]

---

1. Similarly there is no requirement for the Judicial Inquiry and Review Board to pass along to the Pennsylvania Supreme Court the Board's investigative file. In fact, in petitioners case it has been certified that the Board did not make its file available to the Supreme Court.

In denying petitioner's request for exculpatory material, the Pennsylvania Supreme Court denied the request without comment. The decision of the Pennsylvania Supreme Court in this regard cannot pass the constitutional muster established by this Court in prior decisions on disclosure of exculpatory material. The Pennsylvania Supreme Court decision denies petitioner that fundamental fairness which the Fourteenth Amendment to the United States Constitution guarantees. For these reasons, a Writ of Certiorari should issue to review the judgment of the Pennsylvania Supreme Court.

III.

THE PENNSYLVANIA SUPREME COURT'S SANCTIONING OF PETITIONER BECAUSE PETITIONER PRESIDED OVER HIS OWN RECUSAL PROCEEDING CONSTITUTES A DENIAL OF FUNDAMENTAL AND PROCEDURAL DUE PROCESS.

The Pennsylvania Supreme Court affirmed the conclusion of the Board that Petitioner violated Canons 1 and 2 of Pennsylvania's Code of Judicial Conduct in that Petitioner's presiding over his own recusal hearing constituted an appearance of impropriety and called into question the independence of the judiciary.

In *Municipal Publications v. Court of Common Pleas*, 507 Pa. 194, 489 A.2d 1286 (1985), a case involving the *Edgehill* defense counsel's motion for petitioners recusal, the Pennsylvania Supreme Court for the first time stated that a judge of the Commonwealth of Pennsylvania must recuse him or herself if the judge's testimony is necessary to disposition of a recusal motion. The Pennsylvania Supreme Court affirms this earlier ruling in the opinion being appealed herein.

However, prior to the Supreme Court's decision in *Municipal Publications v. Court of Common Pleas, supra*, the law of the Commonwealth as established by the Supreme Court in *In re Crawford's Estate*, 307 Pa. 102, 160 A. 585 (1931), was that all motions for recusal must first be directed to the presiding judge for disposal. In accordance with *Crawford's Estate, supra*,

Petitioner entertained the *Edgehill* defense counsel's motion for recusal. It is not until the Pennsylvania Supreme Court's decision in *Municipal Publications v. Court of Common Pleas, supra*, that any sitting judge in the Commonwealth of Pennsylvania could know that presiding over a recusal motion could be grounds for sanctions under the Code of Judicial Conduct. Petitioner is well aware of the case law that suggests that the ex post facto clause of the United States Constitution, is a limitation upon powers of state legislatures and does not by its own terms apply to judicial decisions. Notwithstanding this proscription, a judicial decision can constitute a violation of the due process clauses of the Fifth and Fourteenth Amendments of the Constitution. *Knutson v. Brewer*, 619 F.2d 747 (8th Cir. 1980) In the appeal *sub judice*, the Pennsylvania Supreme Court's changing midstream, the ground rules as they apply to judicial procedure in a recusal hearing, is a technical violation of the ex post facto clause and a substantive violation of petitioner's due process rights.

In the opinion being appealed, the Pennsylvania Supreme Court cites *Commonwealth v. Darush*, 501 Pa. 15, 459 A.2d 727 (1983) as authority which should have put Petitioner on notice that Petitioner's presiding over the recusal hearing was conduct that could not be condoned under the Code of Judicial Conduct. However, the issue in *Darush, supra* was whether or not a judge who had formerly prosecuted a party could preside over that party's recusal motion in a subsequent criminal action. Moreover, in the opinion being appealed, the Pennsylvania Supreme Court cites its earlier decision in *Darush*, as a warning to all sitting judges that:

> ". . . a judge should not and could not continue to preside over is own recusal when he felt his own testimony or explanation was necessary to disposition of the recusal motion." *Judicial Inquiry and Review Board v. Snyder*, 523 A.2d 294, 298 at p. app.

In the case being appealed, the *Edgehill* defense counsel subpoenaed Petitioner herein to give testimony in connection with their own recusal motion. The fact that Petitioner was

subpoenaed is not tantamount to a decision that "he felt his own testimony or explanation was necessary".

There is no question, that Plaintiff is being sanctioned by the Pennsylvania Supreme Court because Petitioner presided over his recusal hearing. Since the law of the Commonwealth of Pennsylvania as set forth in *Crawford's Estate, supra, directed* a presiding judge to hear his own motion for recusal, the Supreme Court's sanctioning Petitioner for adherence to this directive violates Petitioner's procedural and substantive rights of due process.

CONCLUSION

For these various reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

/s/ HARRY LORE
HARRY LORE, Esquire
1919 Walnut Street
Philadelphia, PA 19103
(215) 569-3304

Attorney for Petitioner

APPENDIX

In the Matter of the JUDICIAL INQUIRY AND REVIEW BOARD, Petitioner,

v.

Judge Bernard SNYDER, Respondent.

Supreme Court of Pennsylvania.

Argued Dec. 2, 1985.
Decided March 20, 1987.

In judicial discipline proceeding, the Supreme Court, Hutchinson, J., held that: (1) issue of whether Supreme Court should remove judge from judicial office was rendered moot by failure of electors to retain judge; (2) removal of judge is warranted by cumulative effect of improper acts; and (3) judge, whose cumulative derelictions warrant removal, but who has not been retained by electors, will be found ineligible to subsequently hold any judicial office.

Ordered accordingly.

Nix, C.J., filed concurring opinion in which he joined majority opinion, and Flaherty, J., joined opinion of Nix, C.J.

McDermott, J., filed concurring and dissenting opinion.

Papadakos, J., filed concurring and dissenting opinion.

1. Judges 11(5)

Issue of whether common pleas judge should be removed from judicial office was moot, where electors had denied judge retention.

2. Judges 11(5)

Once instituted, Supreme Court's jurisdiction over judicial disciplinary proceedings is only at an end when Supreme Court issues final order.

3. Judges 11(8)

For Supreme Court to discharge its responsibility for disciplining justices and judges, Supreme Court must review de novo record created by Judicial Inquiry and Review Board and determine whether record presents clear and convincing evidence of improper conduct, and if so, appropriate discipline. Const. Art. 5, § 18(h).

4. Judges 11(4)

Removal is justified by cumulative effect of judicial derelictions including, with respect to one case, holding of ex parte conferences with counsel for plaintiff without informing defense counsel, permitting both counsel to engage in unprofessional conduct during trial without sanction or disciplinary action, entering exceptionally large award of damages for plaintiff without evidentiary hearing and basing those damages on information obtained outside of record, and acting simultaneously as judge and as witness in presiding at hearing on motion for judge's recusal. Code of Jud.Conduct, Canons 1-3; Const. Art. 5, §§ 17(b), 18(d).

5. Judges 11(4)

Judge, whose cumulative derelictions justify removal, but who has not been retained by electors, will be found ineligible to subsequently hold any judicial office. Const. Art. 5, §§ 17(b), 18(d), *(l)*.

Leonard Schaeffer, Philadelphia, for petitioner.

Richard E. McDevitt, Exec. Director, JIRB, G. Thomas Miller, Special Counsel for JIRB, Harrisburg, for respondent.

Before NIX, C.J., and LARSEN, FLAHERTY, McDERMOTT, HUTCHINSON, ZAPPALA and PAPADAKOS, JJ.

OPINION OF THE COURT

HUTCHINSON, Justice.

We have before us three petitions: one filed by the Judicial Inquiry and Review Board (Board) on July 1, 1985, recommending that respondent, Judge Bernard Snyder, be removed from the office of Judge of the Court of Common Pleas of Philadelphia County and two petitions filed by Judge Snyder.[1]

The Board's recommendation is based on its findings: that in the case of *Edgehill v. Municipal Publications, Inc.*, C.P. Philadelphia, May Term, 1972, No. 2371, respondent held frequent *ex parte* conferences with counsel for the plaintiff without informing defense counsel; that these discussions centered on evidentiary and other legal issues involved in this bench trial; that respondent permitted both counsel to engage in unprofessional conduct during the trial, without sanction or disciplinary action; that respondent entered an exceptionally large award of damages for the plaintiff without an evidentiary hearing and based those damages on information obtained outside the record and that respondent presided at a hearing on a motion for his own recusal, acting simultaneously as judge and as witness.[2] These actions caused the Board to conclude that respondent, by violating Canons 1, 2 and 3 of the Code of Judicial Conduct, 455 Pa. xxx (1973), had violated Article V,

---

1. On September 9, 1985, Judge Snyder filed a request for a Writ of Mandamus against the Judicial Inquiry and Review Board, seeking access to documents in the Board's files. This petition is hereby denied. After receiving two extensions of time from this Court, Judge Snyder filed his Petition to Reject or Modify the Recommendation of the Board on September 11, 1985 as permitted under J.I.R.B. Rule 17. These three petitions all came on for argument under our No. 108 J.I.R.B. Docket 1985, relating to an earlier petition for a Writ of Prohibition filed by Judge Snyder on June 26, 1985. Since that petition has already been denied, we have entered an order amending the caption to reflect the title and docket numbers assigned to the Board's petition. Our disposal of that petition compels denial of Judge Snyder's later petition for mandamus and his application to reject the Board's recommendation. It is so ordered.

2. We have already decided that Judge Snyder was disqualified from deciding this recusal motion in *Municipal Publications v. Court of Common Pleas*, 507 Pa. 194, 489 A.2d 1286 (1985).

Section 17(b) of the Pennsylvania Constitution[3] and that the appropriate sanction for such behavior would be removal from the office of Judge.

Observance of these canons by judges is essential to public faith in the justice of our Commonwealth's judicial system. They are positive commands, adopted by this Court, with the force of law. They bind all judges and justices and will be enforced by this Court's imposition of discipline when appropriate. In this case, our *de novo* review of the record persuades us, as ultimate fact finder, that the Board's findings are correct and the recommended discipline of removal appropriate. Respondent has, therefore, forfeited any possibility of holding judicial office in accordance with Article V, Section 18(*l*) of our Pennsylvania Constitution.

Specifically, the Board concluded that Judge Snyder had violated Canon 1 of the Code of Judicial Conduct, which provides:

> A Judge Should Uphold the Integrity and Independence of the Judiciary
>
> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

455 Pa. at xxx (1973).

The Board concluded that Judge Snyder had "brought discredit to himself and the judiciary in general by the manner in which he presided at the *Edghill* [sic] trial" and the ancillary recusal hearing.[4] Board's Report, Findings of Fact, Conclusions

---

3. Article V, Section 17(b) provides:
Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court.

4. Although the great bulk of the recorded testimony before the Judicial Inquiry and Review Board concerns the Edgehill trial, the record also contains

of Law and Recommendations, filed July 1, 1985, (Board's Report), Conclusion of Law No. 14. In this regard the Board explicitly cited Judge Snyder's action in "presiding at the hearing on the recusal motion, knowing that he had been subpoenaed as a witness at that hearing, and thus, that he would be called upon to make evidentiary rulings on objections to his own testimony." *Id.*, Conclusion of Law No. 12.

The Board further concluded that Judge Snyder had violated Canon 2, which provides in pertinent part:

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or knowingly permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

> *Commentary:* Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
>
> The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

---

testimony concerning respondent's handling of other cases. *See e.g.*, Record at 696-699, 757-779, 1186-1239, 1769.

455 Pa. at xxx-xxxi.

Here the Board cited five specific acts which each represented a violation of this Canon: (1) the rendition of a verdict in the *Edgehill* case while a request for his recusal or disqualification from further action in the proceeding remained pending, Board's Report, Conclusion of Law No. 9; (2) the rendition of a verdict in the *Edgehill* case upon learning that defense counsel had requested the assignment of a judge from another county to hear argument on their recusal motion, *Id.*, Conclusion of Law No. 11; (3) Judge Snyder's action in presiding over the recusal motion knowing that he would be a witness, *Id.*, Conclusion of Law No. 12, *see* text *supra* at 3; (4) the manifestation of bias in his refusal to admit the testimony of one of his former law clerks on the issue of his bias and partiality at the recusal hearing, *Id.*, Conclusion of Law No. 13, and (5) Judge Snyder's "socializing with the attorney for plaintiff in the *Sentner* case,[5] prior to the entry of a decision in that case," *Id.*, Conclusion of Law No. 15.

Finally, the Board concluded that Judge Snyder had violated the following sections of Canon 3:

> A Judge Should Perform the Duties of His Office Impartially and Diligently
>
> The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:
>
> A. Adjudicative Responsibilities
>
> . . . .
>
> (2) A judge should maintain order and decorum in proceedings before him.
>
> (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require

5. *Sentner v. William L. Crow Construction Company*, C.P. Philadelphia, March Term, 1977, No. 2232.

similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

455 Pa. at xxxi-xxxii.

In support of its conclusion concerning these violations, the Board cited Judge Snyder's failure "to maintain order and decorum during the *Edghill* [sic] trial", Board's Report, Conclusion of Law No. 1, and his failure "to take appropriate disciplinary measures against counsel for both parties for their unprofessional conduct toward each other and the court" during that trial, *Id.*, Conclusion of Law No. 2.

Canon 3 A.(4) provides:

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, must not consider ex parte communications concerning a pending proceeding.

455 Pa. at xxxii.

The Board's conclusion that this subsection had been violated was based on the Judge's entry of a verdict, including an award of punitive damages, in the *Edgehill* case, without reviewing the trial transcript and "without the benefit of *any* record evidence on the issue of punitive damages," Board's Report, Conclusion of Law No. 7 (emphasis in original). This conclusion was also bolstered by the Judge's assessment of punitive damages "without affording counsel the opportunity to present evidence, make argument, and proffer findings of fact and conclusions of law on the question of plaintiff's entitlement to such damages, and the amount of such damages, if any, as [Judge Snyder] had previously agreed he would do," *Id.*, Conclusion of Law No. 8, by his refusal to admit testimony on the issue of his own bias and partiality, *Id.*, Conclusion of Law No. 13, *see* text *supra* at 4, and by his socializing with the

attorney for the plaintiff in the *Sentner* case, *supra*, prior to the entry of his decision, *Id.*, Conclusion of Law No. 15, *see* text *supra* at 4. In our judicial system, judges do not enter judgments without a full record or without giving the parties an opportunity to present their arguments on the issues presented by that record. Respondent ignored these basic requirements.

Canon 3 C. addresses the issue of recusal:

C. Disqualification

(1) *A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned*, including but not limited to instances where:

> (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
>
> (b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
>
> . . . .
>
> (d) *he* or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> . . . .
>
> (iv) *is to the judge's knowledge likely to be a material witness in the proceeding*.

455 Pa. at xxxv-xxxvi (emphasis added).

In support of the Board's conclusions under these subsections, the Board cited: Judge Snyder's failure to disqualify himself in the *Edgehill* recusal hearing in view of the personal bias manifested by his refusal to admit the testimony of a former law clerk, Board's Report, Conclusion of Law No. 13, *see* text *supra* at 4, Judge Snyder's resumption of authority over the *Edgehill* case and his rendition of a verdict upon learning that defense counsel had requested the assignment of a judge from

another county to hear argument on their recusal motion, *Id.*, Conclusion of Law No. 11, *see* text *supra* at 4, and his action in "presiding at the hearing on the recusal motion, knowing that he had been subpoenaed as a witness at that hearing, and thus, that he would be called upon to make evidentiary rulings on objections to his own testimony," *Id.*, Conclusion of Law No. 12. *See also Municipal Publications v. Court of Common Pleas*, 507 Pa. 194, 489 A.2d 1286 (1985), *supra* at n. 2. Although *Municipal Publications* was not decided until after respondent's actions in the recusal hearing, our earlier opinions had already indicated that a judge should not and could not continue to preside over his own recusal when he felt his own testimony or explanation was necessary to disposition of the recusal motion. *Commonwealth v. Darush*, 501 Pa. 15, 459 A.2d 727 (1983).[6] In any event, the record, taken as a whole plainly shows bias which should have led respondent to great recusal. Therefore, reliance on *Crawford's Estate*, 307 Pa. 102, 160 A. 585 (1931), which respondent interprets as in conflict with *Municipal Publications*, *supra*, would be unavailing if, indeed, a conflict does exist.

This Court heard argument on the Board's Recommendations on December 2, 1985. Since then, we have carefully studied the entire record, including the eighty-five (85) volumes of Notes of Testimony from the *Edgehill* trial, the twenty-eight (28) volumes of Notes of Testimony from the *Edgehill* recusal motion and the nine (9) volumes of Notes of Testimony from the Board's hearings, and deliberated over the issues and the sanctions which are appropriate to this case.

[1, 2] In November of 1985, before we heard argument, the electors in the City of Philadelphia denied Judge Snyder's quest for retention as a Common Pleas judge, thus rendering moot the question of whether this Court should remove him from judicial office. *Curry v. Parkhouse*, 468 Pa. 542, 364 A.2d 326 (1976);

---

6. *Municipal Publications*, *supra*, reversed a Superior Court order granting a writ of prohibition precluding respondent from continuing to preside in the *Edgehill* matter. Superior Court's opinion stated that a new judge was required to hear recusal motions in all cases. We granted plenary jurisdiction and held, instead, that a judge could not testify and continue to preside in his own recusal.

Meyer v. Strouse, 422 Pa. 136, 221 A.2d (1966). The election results, however, have not ended our responsibility where other issues remain. *Powell v. McCormack*, 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969); *Sweeney v. Tucker*, 473 Pa. 493, 375 A.2d 698 (1977). This Court is responsible for maintaining the integrity of judicial administration so as to uphold public respect for the rule of law. Once instituted, our jurisdiction over disciplinary proceedings is thus only at an end when we issue a final order. *Accord In re Hunt*, 308 N.C. 328, 302 S.E.2d 235 (1983); *In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978) cert. denied*, 442 U.S. 929, 99 S.Ct. 2859, 61 L.Ed.2d 297 (1979).

Article V, Section 18(d) of our Constitution provides that justices and judges "may be suspended, removed from office or *otherwise disciplined* for violation of section 17 of this article . . . or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute. . . ." (emphasis added). The Constitution of Pennsylvania has placed responsibility for judicial discipline in our hands and we cannot avoid the obligation to demonstrate, both to the profession and to the public, that bias and arrogance prejudice the proper administration of justice and bring a judicial office into disrepute. Respondent's conduct can not and will not be tolerated on the bench of any court in Pennsylvania and, while we shall not be hasty in any case, our discipline will assuredly be certain.

[3] Article V, Section 18(h) directs: "The Supreme Court shall review the record of the board's proceedings on the law and facts and may permit the introduction of additional evidence. It shall order suspension, removal, discipline or compulsory retirement, or wholly reject the recommendation, as it finds just and proper." Thus, it is plain that this Court has the responsibility for disciplining justices and judges. To discharge that responsibility, we must review *de novo* the record created by the Judicial Inquiry and Review Board and ourselves determine whether it presents clear and convincing evidence of such conduct and, if so, the discipline appropriate.

[4, 5] We find the evidence of respondent's derelictions clear and convincing on this record. Taking all of them together, we also find that their cumulative effect is so serious that

removal, as recommended by a majority of the Judicial Inquiry and Review Board, would be the only appropriate sanction. Though Judge Snyder has already been removed from office by the voters, it remains for us to impose the judicial sanction which will render the intended operation of Section 18 complete. Otherwise the action of the Judicial Inquiry and Review Board would have no legal effect.

Through Section 18 the people have entrusted to this Court the task of finally determining whether a judge should be disciplined and, if so, the extent of that discipline and its consequences. Those consequences are not necessarily restricted to the term for which the judge has been elected or retained when he engages in improprieties which require discipline. In most cases, when this Court acts to remove sitting justices or judges, the language of Section 18(*l*)[7] itself bars them from further judicial service. In this instance, the electors have removed Judge Snyder from office. It is only this Court, however, which can sanction respondent for his conduct by finding him ineligible hereafter to hold any judicial office. On this record, it is our duty to do so. It is so ordered. The recommendation of the Judicial Inquiry and Review Board is adopted and respondent's petitions are denied.

NIX, C.J., files a concurring opinion in which he joins the majority.

FLAHERTY, J., joins the majority opinion and NIX's, C.J., concurring opinion.

McDERMOTT and PAPADAKOS, JJ., file concurring and dissenting opinions.

NIX, Chief Justice, concurring.

I join the majority opinion. I am constrained to write to respond to some of the questions raised in the concurring and dissenting opinion of Mr. Justice Papadakos.

---

7. Section 18(*l*) provides:
A justice, judge or justice of the peace . . . removed under this section 18 shall forfeit automatically his judicial office and thereafter be ineligible for judicial office.

Under the scheme of Article V, Section 18 of our Constitution, a recommendation of removal by the Judicial Inquiry and Review Board ("Board") requires this Court's action before it has efficacy. In the interim between Board action and this Court's pronouncement, death, resignation or, as in this case, defeat in a retention effort might intervene. Thus the question arises whether the issue is mooted by one of these events. If this Court accepts a recommendation of removal, the effective date is obviously as of the date of the decision of this Court. The Board's power is limited to recommending the sanction it deems appropriate. The final action under Article V, Section 18 is committed to the Court and not the Board for discipline under this Section of our Constitution. This is consistent with the Article's clear mandate to repose in this Court the ultimate responsibility for the management and discipline of the members of the unified judiciary within this Commonwealth.[1] There is no question that the Order entered today speaks from this date.

The real concern raised by the mootness issue is whether any purpose is served by a continuation and completion of the disciplinary process after the jurist in question has left office. As stated by the majority opinion and conceded by the dissent, the jurisdiction of the Court over the disciplinary processes under Article V, Section 18 is not affected by termination of the judicial service during the course of these proceedings. The issue is therefore a question of whether any purpose is to be served by continuing the proceedings to their conclusion. Where the event terminating the jurist's service is death, there is arguably no purpose served by an ultimate finding by this Court.[2] However, where the termination results either from the completion of the term of office, an unsuccessful bid for retention, or a voluntary retirement the question of the former jurist's right to again seek judicial office in this Commonwealth remains unanswered. See Article V, Section 18(*l*). It is for this reason that the

1. Article V, Section 18(n) leaves impeachment as an alternative vehicle for the removal of a judicial officer.

2. The issue of the entitlement of the jurist's estate to retirement benefits, in the event of an intervening death, may require a conclusion of the disciplinary process.

majority in this matter properly concluded that the issue was not mooted by the unsuccessful retention bid.[3]

The concern of the dissent that this process will cast a cloud upon all of the decisions of the affected judicial officer from the date of the filing of the Board's recommendation is without substance. If that reasoning is followed it could be argued that the decisions rendered by the jurist during the proceedings before the Board would also be suspect. Recognizing the resourcefulness of counsel of this bar, I realize that if we accept that premise it could be cogently argued that from the period Judge Snyder's conduct came into question all of his decisions could be questioned. This is inevitable, but not catastrophic. In each instance an error must be demonstrated before relief would be warranted and such would be the case in any event.

FLAHERTY, J., joins this opinion.

McDERMOTT, Justice, concurring and dissenting.

The removal of a duly elected judicial officer is a matter of the gravest possible concern. The exercise of such power must be rounded at the very least, with all the fundamental protections known to the constitutional jurisprudence of this Commonwealth.

The power to remove by this court or any tribunal, however well founded, constituted, intended or necessary its purpose, by its very nature is capable of compromising the franchise of the people and the independence of the institution it is designed to guard. Both the people and person sought to be removed must precisely know the reasons for the exercise of such power. Those reasons must be grave reasons, based upon facts that constitute misbehavior tantamount to the intentional violation of known precise rules of law, and the proofs must, as for the protection of our other liberties, be beyond a reasonable doubt.

To do less is to put the judicial institution to the possible whim of the tides of the times. Nothing could prove more

---

3. It must be noted that the failure to be retained does not terminate the service of the jurist, since he or she is allowed to complete the initial term of office. The effect of a retention defeat only precludes the jurist from serving an additional term without a subsequent election or appointment.

destructive of that judicial independence so vital to our liberty, than an uncertain or ambiguous standard, changeable at the whim of this Court or the Judicial Inquiry Review Board.

The power to remove and discipline is deposited by the Consitution in this Court. Article 5 § 18 of the Pennsylvania Constitution provides in relevant part:

> any justice or judge may be suspended, removed from office or otherwise disciplined for violation of section seventeen of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute . . .

Article 5 § 18(d). Section 17 of the same Article describes the activities from which all judges and justices are prohibited:

> (a) Justices and judges shall devote full time to their judicial duties, and shall not engage in the practice of law, hold office in a political party or political organization, or hold an office or position of profit in the government of the United States, the Commonwealth or any municipal corporation or political subdivision thereof, except in the armed service of the United States or the Commonwealth.
>
> (b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.
>
> (c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or prerequisite — site other than the salary and expenses provided by law.
>
> (d) No duties shall be imposed by law upon the Supreme Court or any of the justices thereof or the Superior court or any of the judges thereof, except such as are judicial, nor shall any of them exercise any power of appointment except as provided in this Constitution.

Art. 5 § 17.

Although the Constitution lays out the reasons upon which this Court may act, it does not set forth what standards are to be utilized in determining when its injunctions have been violated. The majority opinion does little if anything to rectify that situation. Instead the majority, without apparent disquietude, lumps all types of discipline together, and enunciates an ambiguous burden of proof.

There can be no question but that whatever standards may be delineated, they must comport with the traditional constitutional requirements of due process. Neither this Court, nor any tribunal can, within that tradition, set standards of procedure that would render elected officials, judicial or otherwise, at the mercy of whim, or small reason.

Under our state Constitution there are only two ways in which a judicial officer can be removed. The first is by the procedure at hand, where the Judicial Inquiry and Review Board, after a hearing, recommends removal and this Court accepts that recommendation. The second is by impeachment. *See* Article 6 § 6. A comparison of two methods clearly demonstrates that there are significant safeguards in the latter method, not the least of which is the ability to confront the body which is ultimately passing judgment, and the fact that the Senate must arrive at a decision by a two thirds-majority.

I cannot believe that the Constitution intended to allow more relaxed standards to be applied by this Court. This Court could not maintain its jurisprudential integrity if it fails to protect, in any context, the basic rights of an accused, and in these instances, the corollary right of the people to those they elect.

Because of the uniqueness of the penalty of removal I would require more safeguards than the majority accords. Firstly, prior to concluding that the activities of a given judge or justice warranted *removal*, I would require that the allegations be proven beyond a reasonable doubt. Secondly, absent a criminal conviction, I would require that prior to removal this Court exercise its constitutional power to receive evidence, Article 5 § 18(h), and at a minimum, allow the judge or justice in question

an audience before this Court.[1]

Since the other sanctions described in Article 5 § 18 are lesser, and more in the nature of disciplining members of the judiciary, with an eye towards improving their performance and the overall performance of the judiciary, I would accept lesser safeguards, and would accept that clear and convincing evidence, as determined by the Judicial Inquiry and Review Board and this Court, would suffice as a basis for the imposition of such discipline.

After completely reviewing the testimony I can conclude and do, under a standard of clear and convincing evidence, Judge Snyder must be disciplined. I am, however, not satisfied beyond a reasonable doubt that removal, the capital penalty, is justified without a finding of personal dishonesty or conviction of an infamous crime.

There is no doubt that Judge Snyder gave serious cause for the "appearance" of impropriety. We may discipline for the "appearance", but without the substance of dishonest impropriety, "appearance" should not of itself be grounds for removal. That is not to say that willful, intentional "appearances", or refusal to correct "appearances" may not suffice; it is to say that our law does not convict for appearance or mere presence alone.

It may well be that the evidence offered in this grim spectacle would meet any standard, but that standard should be stated with clarity and be the canon under which all the evidence is scrutinized.

Accordingly, I would enter an order of suspension as the appropriate discipline.

PAPADAKOS, Justice, concurring and dissenting.

I am compelled to dissent because I believe that the Majority Opinion in this case is incorrect in its application of the law.

The initial problem posed by this case is the fact that because the Respondent is no longer in office as of the date of

---

1. If we are not willing to exercise this power in imposing the most serious sanction possible we are effectively denigrating the constitutional grant of such power to such an extent as to render it nugatory.

this decision today, our jurisdiction over these disciplinary proceedings may be susceptible to attack. In order to dispel any confusion over this issue, I wish to underscore at the outset the fact that this Court possesses continuing and plenary jurisdiction which cannot be foreclosed prior to our final decision in a case. Our authority to conduct judicial proceedings and impose punishment, moreover, flows directly from our State Constitution.[1] It does not depend, as the Majority argues, on the authority of cases from either sister states or other decisions which, in any event, are distinguishable on the facts. There is no need, therefore, to reach beyond our own Constitution to find a basis of continuing jurisdiction. In sum, this tribunal continues to have constitutional jurisdiction inspite of any intervening acts which result in a judge leaving office. Once the discretionary punishment of removal is selected by this Court as appropriate under the facts of a case, of course, perpetual banishment under Article 5, Section 18(e), results automatically by operation of the Constitution.

Because of these arguments, the Majority decision is badly flawed in two other respects. On the one hand, I presume that it is the intent of the Majority to fix the date of removal from office as some date prior to the natural termination of Respondent's term, while he was still in office.[2]

---

1. Article 5, Section 1; Article 5, Section 10(a). In addition, this Court is imbued with inherent supervisory and administrative power over the inferior courts and judicial officers. *In re Franciscus* 471 Pa. 53, 369 A.2d 1190 (1977), *cert. denied*, 434 U.S. 870, 98 S.Ct 212, 54 L.Ed.2d 148 (1977); *Carpentertown Coal and Coke Co. v. Laird*, 360 Pa. 94, 61 A.2d 426 (1948).

2. In his concurring opinion, Chief Justice Nix expresses a view that "If this Court accepts a recommendation of removal, the effective date is obviously as of the date of the decision of this Court," (p. 300) and "There is no question that the Order entered today speaks from this date." (p. 300). I am mindful that wills speak as of the date of death. Not Orders of Court which can be effective some specific date in the past (nunc pro tunc orders), the date of entry, or some specific date in the future.

If the Majority is of the same view as Chief Justice Nix that the removal of Judge Snyder is effective the date of the decision of this Court, I am then at a loss to understand how we can, today, remove a person from an office he no longer occupies.

In that case, it is obvious that the Respondent's judicial decisions taken subsequent to that date of removal may linger under a pall of suspicion regarding their validity. This could easily result in additional damage to judicial integrity through collateral attacks. Of course, we are empowered fully to set any removal date, but the consequences of our choice should not result in foolishness.

On the other hand, the Majority compounds its own problems even further by interpreting Respondent's retention election loss as a removal from office. The truth, on the contrary, is that following Respondent's rejection at the polls, he completed his full term, was not *removed* during his tenure, and is fully eligible to run in the future in a contested election, unless and until this Court imposes the punishment of removal from office. The loss of a retention election cannot be equated with *removal* from office in any case. Under the Majority's definition, that would mean that all losers of retention elections could be considered as being *removed* from office by the electorate, and arguably subject to the same type of sanction. Is this the intent of the Majority's argument? The electors of Philadelphia County chose not to *return* Respondent to office; they did not *remove* Respondent from office.

In place of futile and confusing efforts to find a date of removal in some past act, the Majority opinion would have been more consistent and jurisdictionally accurate had it simply stated that its decision to remove Respondent from office was legally effective as of a date, nunc pro tunc, while Respondent occupied the office. In that fashion, this Court then could decide that its jurisdiction over the disciplinary proceeding was continuing and not at an end until the date of the final order *regardless* of any intervening election, or resignation, or even death. This would have resolved the conundrum of the validity of Respondent's subsequent decisions and rendered irrelevant the vexatious issue of the retention election loss.

Because I am convinced that this Court possesses such undisputed authority to retain jurisdiction, I find no merit in the Majority's inconsistencies on the subject of removal. A gap will always exist between the actions of the Board and a final order

issued by this Court. Judges will continue to hold office and hand down decisions during this period, and the very problems addressed by this case will be re-created in the future.

In the context of the present case, this Court should decide that its final order is the last legal step which divests the judge of authority, even though such order may act in a nunc pro tunc fashion. As for future cases, I strongly recommend the use of our recently adopted administrative solution[3] in the form of a temporary suspension with pay, imposed by this Court, to take effect on the date we select. The errant judge would be prevented thereby from sitting on the bench pending a final order by this tribunal.

It is beyond dispute that Respondent committed egregious errors of judicial behavior in violation of the Pennsylvania Constitution and the Code of Judicial Conduct. It is equally clear that appropriate discipline is necessary in order to provide adequate assurances to the public that judicial misbehavior is, in fact, being dealt with in a firm manner. Where a member of the Pennsylvania Judiciary has been derelict in the performance of positive duties, there can be no alternative to the application of proper sanctions in order to protect the integrity of the courts and the rule of law. As Mr. Justice Stewart wrote in *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 848, 98 S.Ct. 1535, 1546, 56 L.Ed.2d 1 (1977), "There could hardly be a higher governmental interest than a State's interest in the quality of its judiciary." This Court, as well, has diligently reaffirmed its intention not to be remiss in its administrative duties regarding the inferior courts. *In re Franciscus*, 471 Pa. 53, 369 A.2d 1190 (1977), *cert. denied*, 434 U.S. 870, 98 S.Ct. 212, 54 L.Ed.2d 148 (1977).

Like my brethren, I, too, have labored long and hard faced with a labyrinthian transcript which intermingles fact with fiction, reality with phantasma, and innuendos with credible evidence. This is a war story replete with gory details of lawyers often conducting themselves in a hateful, vengeful and deceitful manner. I find a judge who genuinely agonized over the

---

3. Rule 24, No. 113 JIRB Docket, eff. 12/5/86.

spectacle taking place before him, finally succumbing to the bludgeoning grip of human passion by violating the sworn duty and honor of his office. I find a judge who allowed himself to be stampeded into thoughtless reaction by presiding over litigation in which he had fatefully implicated himself as a witness, and then entered an illegal verdict as well. Finally, I am not unmindful of the severe chastisement this judge has received in public fora. This is a judge who, up to this point, possessed a distinguished record of judicial service to the citizens of this Commonwealth.

I know that we have given serious consideration to the other side of the rule of judicial integrity. For while we are charged to protect the public's confidence in the honesty of the judicial process, we must not blind ourselves to the fact that such integrity also derives from a "just and proper" treatment of those who man the judicial ramparts. They, too, have a right to expect balanced punishment even when they fail as dramaticaly as has the Respondent in this case. Integrity in the law comes from many sources, including the knowledge of our sitting judges that their long and competent labors in the vineyard will not be *totally* sacrificed when they fall.

Under the aggregate facts of this case, I see a judge who used his judicial power in a vengeful manner. By his own conduct he has plunged himself into the depths of judicial oblivion. Despite his prior unblemished record on the bench, and his unassailable reputation as a practicing member of the bar, both of which should receive great weight as we ponder his fate, we are obliged to consider the abuse of raw judicial power exercised by Respondent which will spawn inexorable complexities in the future.

For these reasons, the law and my conscience leave me no alternative but to concur in the result reached by the majority and order Respondent's removal from office. I would make such removal effective as of December 30, 1985.